

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.5645 OF 2012

WITH

CRIMINAL APPEAL NO.412 OF 2013

CRIMINAL APPLICATION NO.5645 OF 2012

The State of Maharashtra, through

Police Inspector, Kadim Jalna Police Station,

Jalna.

.. Applicant

(Original Complainant)

.. Versus ..

1. Sandeep Laxman Tirukhe, Age 30 years,
2. Chandrakala w/o Janardhan Tirukhe, Age 62 years,
3. Ganesh Janardhan Tirukhe, Age 31 years,
4. Laxman Agaji Tirukhe, Age 56 years,
5. Janabai w/o Laxman Tirukhe, Age 50 years,
6. Pradeep Laxman Tirukhe, Age 24 years,
7. Anita w/o Santosh Goje, Age 26 years,

Accused Nos.1 to 3, R/o. Daregaon,

Tahsil and District – Jalna,

Accused nos.4 to 7, R/o. Satara Parisar,

Aurangabad.

.. Respondents

(Original Accused)

.....

Shri M.M. Nerlikar, APP for the Applicant,

Shri V.D. Sapkal, Advocate for the Respondent Nos.1 to 7.

.....

WITH

CRIMINAL APPEAL NO.412 OF 2013

Bhagwan s/o Ambadas Kanhere,
Age 52 years, Occupation-Agriculture,
R/o. Gevrai Bazar, Tah. Badnapur,
District – Jalna.

..
(Original Complainant)

.. Versus ..

1. The State of Maharashtra,
(Copy to be served on G.P. Of
High Court Bench at Aurangabad).
2. Sandeep Laxman Tirukhe,
Age 32 years,
3. Chandrakala w/o Janardhan Tirukhe,
Age 64 years,
4. Ganesh Janardhan Tirukhe,
Age 33 years,
5. Laxman Agaji Tirukhe,
Age 58 years,
6. Janabai w/o Laxman Tirukhe,
Age 52 years,
7. Pradeep Laxman Tirukhe,
Age 26 years,
8. Anita w/o Santosh Goje,
Age 28 years,

Accused Nos.1 to 3 resident of Daregaon,
Tahsil and District – Jalna,
Accused nos.4 to 7 r/o. Satara Parisar,
Aurangabad.

..
Respondents

.....
Shri V.B. Jogdand, Advocate h/f Shri N.S. Ghanekar, Advocate for the Appellant,

Shri M.M. Nerlikar, APP for Respondent No.1-State,

Shri V.D. Sapkal, Advocate for Respondent Nos.2 to 8.

.....
**CORAM : S.S. SHINDE AND
A.I.S. CHEEMA, JJ.**

RESERVED ON : 23.07.2015.

PRONOUNCED ON : 01.09.2015.

JUDGMENT : (Per : A.I.S. CHEEMA, J.)

1. Criminal Application No.5645/2012 has been filed by the State under Section 378 (1)(3) of the Code of Criminal Procedure, 1973 seeking leave to file appeal against the judgment of acquittal passed in Sessions Case No.200/2010 by the learned Sessions Judge, Jalna on 24.9.2012, wherein the respondents/accused nos.1 to 7 (hereinafter referred to as 'accused nos.1 to 7) have been acquitted of the offence punishable under Section 302 r/w 34 in alternative Section 304-B r/w 34 and Section 498-A r/w 34 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Dowry Prohibition Act.

2. Criminal Appeal No.412/2013 has been filed by the original complainant PW-1 Bhagwan Ambadas Kanhere against the same acquittal. The application for leave as well as the appeal for admission

have been heard finally.

3. The case of the prosecution, in brief, is as follows :

(a) Sapna, the daughter of PW-1 Bhagwan, was married to accused no.1 Sandeep on 30.4.2007. The rest of the accused are relatives of accused no.1. On 15.2.2010, PW1-Bhagwan filed FIR Exh.42 with PW-14 API Rangnath Phule of Police Station, Sadar Bazar, Jalna. The complaint is that his daughter Sapna, after marriage, was treated well for about one year and, thereafter, the accused persons started demanding Rs. 5 Lacs to get the same from her parents, so that accused no.1 could acquire the job of Gramsevak. She was unable to bring the money. She was mentally harassed and also beaten by accused persons. The complainant brought her to his place in 2009 for Diwali, as she was pregnant. Later on a female child was born to her. When the complainant informed accused no.1 to take back Sapna and the child, accused no.1 asked for Rs. 5 Lacs as the condition to take back Sapna. In view of this, the complainant withdrew Rs. 2 Lacs from the bank and the money was sent to accused no.1 on 19.12.2009 through his son PW-7 Yogesh. PW-7 Yogesh went to Aurangabad with the amount and had taken along PW-8 Shivaji Wagh and PW-9 Sambhaji Kanhere. After the money was paid, accused promised to take back the victim in 2-3 days. On 3.1.2010, accused no.1 came to take back Sapna, but he wanted

another Rs. 1 Lac. The amount was paid and the victim and the child were taken by accused no.1. On 7.1.2010, accused no.1 again asked for Rs.2 Lacs. On 7.2.2010, complainant received phone call from his brother-in-law Narayan Golde informing that the victim was found missing from Deepak Hospital, Jalna. Consequently, the complainant, his family and relatives searched for the victim, but she was not traced out. The complainant, on 10.2.2010 had filed report (Exh.41) with Kadim Jalna Police Station. On 14.2.2010 dead body of the victim had been recovered from well at Hanuman Tekdi. Therefore, complaint. In Exh.41, it was claimed in the report that there was search for the victim since 7.2.2010. On 9.2.2010, complainant had taken the phone of accused no.1, when there was a call coming in and accused no.3 Ganesh not knowing that accused no.1 was not on the line stated on the phone that he would come with the victim to the Railway Station, Jalna. After five minutes, the accused no.3 again made call that he was standing near Satkar Building with the girl i.e. Sapna. Due to this, complainant expressed suspicion that the accused persons had kidnapped the victim and she should be rescued.

(b) On 14.2.2010, one Bandu Devidas Nikalje (PW-2) filed a report Exh.44 at Police Station, Sadar Bazar, Jalna of having seen a dead body of a female in the well of one Ramesh Gaud behind Golden Jubilee School. The information was registered at the Police Station as

A.D. No.4/2010 and PSI Mr. Phule enquired into it. He went to the spot and the dead body was taken out from the well. The spot panchanama Exh.45 was prepared as also inquest panchanama Exh.47 was also prepared. There was a rope, article no.1 around the waist of the woman. The body was in decomposed condition. It was sent for postmortem to the Civil Hospital, Jalna. Postmortem was conducted by PW-11 Dr. Prakash on 15.2.2010 at about 10.15 am treating the woman as unknown female. Later, the dead body was identified by Yogita, the aunt of PW-7 Yogesh as that of deceased Sapna. Thereafter, the complainant PW1 Bhagwan filed report Exh.44 referred above. Offence was registered as Crime No.35/2010 at Police Station, Sadar Bazar, Jalna. The investigation was done by API Rangnath Phule. He recorded the statements of the witnesses. The viscera of the victim was sent to the Chemical Analyser. No poison was detected. Dr. Prakash (PW-11) gave final report of the cause of death as head injury with corresponding internal injury i.e. fracture of right parietal bone with rupture of brain matter. The clothes of the victim had also been seized vide panchanama Exh.51 as well as the rope which was found tied around her waist. The clothes of the victim were also sent to Chemical Analyser. After the investigation, the charge-sheet came to be filed by the Deputy Superintendent of Police Shri Gujar.

4. The offence being sessions triable, it was committed to the Court of Sessions. The charge came to be framed for the offences as mentioned above and the accused pleaded not guilty. Their defence is that of total denial.

5. The prosecution examined 14 witnesses to establish the case against the accused persons. The accused persons examined one defence witness.

Trial Court held...

6. The trial court, after considering the material brought before it discussed the evidence and found that there was no sufficient evidence to hold that the deceased died of homicidal death. Even regarding Sections 304-B and 306 of the Indian Penal Code and the sections under the Dowry Prohibition Act, the trial court discussed the evidence of alleged demands of money and the ill-treatment claimed by the witnesses and came to the conclusion that it was not proved that there was demand of dowry and that there was ill-treatment. The evidence was weighed and the trial court found that it was not proved that soon before the death the victim was subjected to cruelty for non payment of dowry or that there was such cruelty so as to abet suicide.

Arguments

7. Against the acquittal, the State has filed this application for leave and it is argued by the learned APP for the State that the evidence in the matter was not properly appreciated. The victim was ill-treated and physically assaulted for non fulfillment of the demand for Rs.5 Lacs. There was corroborative evidence from PW-8 Shivaji and PW-9 Sambhaji to the accused persons regarding payment of Rs.2 Lacs and similarly there was evidence of PW-10 Ganesh supporting the complainant that he had paid money to the complainant because he wanted to pay Rs. 1 Lac to the accused no.1. The death occurred within seven years of the marriage and it being unnatural death, the accused were liable to explain and according to the learned APP, the offence was proved. The learned counsel for the complainant also supported the learned APP. According to the complainant, there was persistent demand for money and victim was not being taken back by the accused as the money was not paid and only when Rs.3 Lacs in instalments were paid, the victim was taken and soon thereafter, she was stated to be missing from the Hospital and later on her dead body was found in suspicious circumstances. PW-5 Paraji Tupe was wrongly disbelieved by the trial court. He was the person, who had last seen the deceased in the company of accused no.1 going on motorcycle on 7.2.2010 in the morning around 11.15 to 11.30 am. In the afternoon, it was stated by accused no.2 Chandrakala to this witness that the victim had gone down

stairs at the Hospital but did not return. According to the complainant, the evidence has not been properly considered and the accused persons should have been convicted.

Per contra, it has been argued by the learned counsel for the respondents-original accused that the judgment of the trial court is well reasoned and view taken is possible view which should not be interfered with. According to the learned counsel, the evidence shows that the accused no.1 and the victim only were residing together and other accused were residing separate. Till the child was born to accused no.1, the relations appear to be normal. Even after, the victim went missing, accused no.1 made lot of efforts to trace her out. There is evidence that accused no.1 used to take care of his wife and her health and her education was improved because of efforts of the accused no.1. There is no reliable evidence of alleged demands or that the victim was harassed or ill-treated. The learned counsel submitted that the application filed by the State and the appeal filed by the complainant deserve to be rejected.

Victim goes missing

8. We have carefully gone through the oral and documentary evidence as brought before the trial court and there is evidence of PW-1 Bhagwan, the complainant, that on 7.2.2010, his brother-in-law Narayan Golde phoned him to inform that accused Sandip enquired from him and

had told him that deceased Sapna had gone to the ground floor from the first floor of Deepak Hospital and she did not return. According to the complainant, Narayan enquired if the victim had come to his house. PW-7 Yogesh, the brother of the victim, has also deposed that on 6.2.2010 the female child of the victim came to be admitted at Deepak Hospital, Jalna due to some illness. On 7.2.2010, Narayan Golde made a phone call to him and informed that the victim had gone down stairs of the hospital and, thereafter, did not come back. Evidence is that PW-1 and PW-7 along with relatives as well as accused no.1 searched for the victim and that she was not found.

Body found

9. There is a evidence of PW2 Bandu Nikalje. According to him, on 14.2.2010 at about 3.30 pm, he had gone to the area where Golden Jubilee School is situated. He noticed a crowd near the well in the field of Ramesh Goud. He went there and saw the dead body of a female floating on the water of well. The female was wearing red colour blouse, red colour sari and black petticoat. He then went to the Police Station, Sadar Bazar and gave information which was recorded as A.D. 4/2010. He proved document Exh.44 in this regard. He accompanied the police back to the spot. Fire-brigade was called and with the help of a rope, the body was taken out from the well. He saw a rope about 5 ft.

long which was around abdomen of the dead body. Police prepared spot panchanama Exh.45 and this witness was one of the panchas. The rope was also seized. According to this witness, the face of the dead body was disfigured and to some extent decomposed. It was a well in vacant land with trees around the place and cattle used to be there for grazing purpose. At some distance, there were two temples and road going towards Deoulgaon-raja. Inquest panchanama Exh.47, dated 14.2.2010 done at 4.30 pm does not contain name of the woman.

Post-mortem

10. Record shows that postmortem was conducted by PW-11 Dr. Prakash on 15.2.2010 at about 10.15 am. Postmortem report Exh.64 was prepared. Doctor found (i) Contusion over right parietal region of the scalp, size 3 x 2 x 1 cm (ii) Linear abrasion over the right leg anterior aspect 10 cms long. The evidence of PW-11 Dr. Prakash is that he found fracture of right parietal bone of scalp and secondly brain matter at right parietal sided ruptured into small pieces. He preserved the viscera for report of Chemical Analyser. The doctor referred it to the C.A. The C.A. report is at Exh.65 and did not show that there was poisoning. Thus, according to him, the death occurred due to head injury corresponding to internal injury which was fracture of right parietal bone with rupture of brain matter. The doctor gave his final opinion as per Exh.67.

11. In the examination-in-chief, Dr. Prakash deposed that in his opinion, the death was homicidal death. However, in the cross-examination, he accepted that the injury was possible by hard and blunt object. In cross-examination he further accepted that if there are steps in the well for reaching to the water of the well and a person falls in the well and if a part of the head comes in contact with the said steps in stones, then injury no.1, mentioned in column no.17 of the postmortem report, was possible.

The Well

12. Now, if we refer to the evidence of PW-13 HC Ramkisan Mante, who prepared the spot panchanama Exh.45, he has admitted in cross-examination that the well concerned had twelve steps in stone in cross direction from the top of the well up to the level of the water in the well. The spot panchanama shows that it was a constructed well with stone steps going down.

Police were informed on 7.2.2010 itself

13. Keeping the above discussion in view, it would now be appropriate to refer to the evidence of PW-12 ASI Sk. Gulam Dastagir s/o Abdul Razzak. His evidence shows that on 7.2.2010 at about 1.00

pm, he was at Murgi Talav Police Chowky and was informed by PSI Patil, who was then PSO at Sadar Bazar Police Station, on phone that in the well situated behind temple of God Datta, a woman had jumped in the well and that he should go to the spot and confirm the news. According to him, he went to the spot along with one constable and inquired with the person grazing cattle nearby the well, but he did not find any woman in the well. The persons there did not say any such thing. He informed this to PSI Patil on mobile. He deposed that even fire-brigade was called and they had also searched in the water by putting hook, but nothing was found. In the cross-examination, this ASI was confronted with his statement recorded subsequently by PW-14 API Phule. The evidence of PW12 read with the evidence of PW-14 makes it clear that this PW12 had not told at the time of investigation that he had made enquiry with the persons grazing cattle nearby the well and that they had told that no woman had jumped in the well. He had also not stated that fire-brigade people searched the body of the woman in the well with the help of hook or that persons grazing cattle were present near the well. This is material because subsequently on 14.2.2010 the dead body came up in the same well.

14. The learned counsel for the accused has rightly argued that on 7.2.2010 the police were informed about a woman falling in the well,

but police did not carefully look into the information and because of this the dead body of the woman was in the water from 7.2.2010 to 14.2.2010. PW-12 had to admit in cross-examination that it was true that he came to know that the said dead body of the woman which was found on 14.2.2010 was the one who jumped into the well on 7.2.2010 and was same woman who had been reported as missing with Kadim Jalna Police Station.

Victim fell in well, was tried to be rescued

15. PW-14 API Rangnath Phule, who investigated the matter, has deposed that on 19.2.2010 one Sultana Shaikh Quader had shown one another piece of rope which also he seized. It appears that on 15.2.2010 when clothes of the victim were seized regarding which panchanama Exh.51 was prepared and PW-5 Paraji and PW6-Dnyaneshwar are examined, a piece of rope about 5 ft. long was seized from the waist of the victim as it was in the form of a loop near her abdomen. PW-5 Paraji was shown rope Art.1 which he accepted as seized under the panchanama. Rope Art.6 he claimed was not the same which was seized by the police under the panchanama. This confusion is cleared by PW-14 Ranganath, who claimed that another piece of rope was seized from one Sultana Shaikh Quader. In the cross-examination, this

investigating officer accepted that the dead body was found floating in the water of the well along with rope. The remaining part of the rope was later on seized by him from witness Sultana. According to this investigating officer, this Sultana was grazing cattle near the well on 7.2.2010 regarding which he recorded her statement. He had also recorded the statement of one Hariappa Katkar, Santosh Aurange and one Chhagan Katkar, who were also grazing cattle on 7.2.2010 near the well. The Investigating Officer PW-14 Rangnath admitted that on 7.2.2010 information was given by one Babanappa Katkar and Santosh Maruti Ujed regarding a woman taking jump in well for which station diary entry 23 (Exh.83) was taken at about 1.15 pm at P.S. Sadar Bazar, Jalna. The portion of fire-bridge, records the caller informing that woman fell in well. One of the persons, who was grazing cattle near the well, at that time was Chhagan Katkar. Although the prosecution recorded his statement, he was not examined. The accused persons examined this Chhagan as DW-1 and his evidence is that he was grazing buffaloes near Gaitridevi Temple at about 12.30 pm. One Rajesh, who was grazing his she-goats, shouted that a woman had fallen and according to this witness, he and 5-6 persons ran towards the well. The witness gave names of those persons also. As per DW-1 Chhagan, they saw woman fallen in the well, who was then alive. He claimed that he along with one Santosh got down into the well with the help of steps

and hooks. There was one bucket tied to the rope. They made the hook of the rope and threw it towards the lady. They were successful in putting the rope around her waist. However, when they tried to pull, the rope broke and she fell down in the water and went down to bottom and did not surface though they waited for 5 to 6 minutes. This DW-1 claimed that, thereafter, they came back to the houses and informed the incident to others. He deposed that he returned the rope to a Muslim girl to which it belongs. This explains the subsequent seizure of part of rope from one Sultana Shaikh by PW-14 Ranganath. The above evidence of DW-1 Chhagan is hardly challenged. The only question asked to him in the cross-examination was that he was not there when the dead body of that woman was taken out of the well. This would be on 14.2.2010. With the unchallenged and unshattered evidence of the DW-1 Chhagan, the position is clear which shows that the victim fell in the well and was still alive and although DW-1 Chhagan and others tried to help her and even succeeded in putting rope around her waist, they could not save her when the rope broke and the victim went down in the water and did not surface. Had the PW-12 Shaikh Gulam seriously followed the information received at the Police Station, the body of the victim could have been taken out on 7.2.2010 itself.

Last seen together ? Uninspiring

16. Prosecution examined PW5 Paraji Tupe, the brother-in-law of the complainant Bhagwan. He claimed that on 7.2.2010, he was going towards new Jalna via Gandhi Chaman (Garden) along with his brother-in-law Rajeshwar Jarhad. He claimed that he saw the accused no.1 Sandeep along with victim proceeding on motorcycle and that they were ahead of them. This was around 11.15 and 11.30 am. According to him, later on when at about 12.15-12.30 pm, they went to Deepak Hospital, Jalna, when accused no.2 Chandrakala told him that minor daughter of victim was with her (at the hospital) but the victim, who had gone down stairs to answer the nature's call did not return. Prosecution has tried to rely on this evidence claiming that the accused was last seen with the victim. In the cross-examination, the omission is proved to the extent that PW-5 had not stated that the victim and accused were ahead of them. However, the witness has to be discarded for the reason that although he claims to have been concerned with the victim missing from 7.2.2010 and for having even searched for her and was panch in Exh.51 panchanama when clothes of the victim were seized on 15.2.2010, he kept quiet and never stated seeing the victim and the accused traveling on motorcycle ahead of him on 7.2.2010. In fact, the statement of this witness was recorded by PW14 Rangnath only on 13.4.2010, which is after a period of two months. Thus, it would be

risky to rely on such evidence.

Culpable Homicide/Suicide – Not proved

17. Looking to the reasons recorded in earlier paragraphs, we find ourselves in agreement with the trial court that culpable homicide is not established looking to the spot and manner in which the victim died. The prosecution has failed to prove beyond reasonable doubt that the death was due to culpable homicide or suicide.

Demand of Dowry – ill-treatment/Cruelty ?

18. Coming to the other evidence of demand of dowry, ill-treatment and cruelty, there is evidence firstly of PW1 Bhagwan and his son PW7 Yogesh. PW 1 and 7 in unison deposed that the marriage took place on 30.4.2007 and that the victim was treated well for about one year. According to them, thereafter the accused no.1 demanded Rs.5 Lacs to the victim, so that he could procure service. The evidence is that the victim asked her father (complainant) for the money but when the complainant expressed inability to pay, the accused persons used to beat the victim. These two witnesses have then deposed that at the time of Diwali-2009 victim was brought to the place of complainant as she was expecting. Lateron, a girl child was born. It appears from the

evidence of PW7 that the daughter was born on 3.11.2009. According to the evidence of these witnesses, after the daughter was born and when the message was given to accused no.1 Sandeep to take back the victim as well as the baby, he insisted for the money of Rs.5 Lacs. The further evidence brought on record by the prosecution is that on 19.12.2009, the complainant PW1 Bhagwan and his son PW7 Yogesh withdrew some money from the bank and PW7 Yogesh was sent to deliver Rs. 2 Lacs to the accused. He went along with PW8 Shivaji, who is his friend and PW9 Sambhaji Kanhere, who is from the same brotherhood of the complainant, to the place of the accused at Aurangabad and Rs.2 Lacs were given.

19. There is further evidence of PW1 Bhagwan and PW7 Yogesh that when Rs.2 Lacs were given, they asked the accused to take the victim back and the accused stated that in a couple of days, she would be taken. PW7 Yogesh has deposed that 7-8 days after 19.12.2009, when the accused were asked to take back the victim, there was further demand of Rs. 1 Lac. It is the evidence that after another 7-8 days, accused no.1 Sandeep came to the place of the complainant. The complainant took Rs.90,000/- from one of his friend PW 10 Ganesh Lahane and added Rs.10,000/- from his pocket and gave it to accused no.1 Sandeep, who thereafter, took the victim along with the Baby. To

corroborate, PW10 has been examined deposing that the complainant had asked him Rs.90,000/- in 2010 as he wanted to give to his son-in-law and he had the money from sale of cotton which was given. The evidence of PW1 is that earlier when Rs.5 Lacs were demanded and were not paid, the victim was subjected to “beating” by all the accused. PW7 Yogesh in this regard stated that deceased Sapna had told him that when the amount was not paid, she was “ill-treated” by all the accused. Now this evidence regarding the demands and cruelty needs to be examined.

If the evidence of PW1 Bhagwan and PW7 Yogesh is perused, the picture which emerges is that after the marriage only for about a month the victim and accused no.1 stayed at Aurangabad, where accused nos.4 to 6 reside. Accused nos.2 and 3 are residents of Daregaon. Accused no.7 got married long back and has been living with her husband, who is government servant at Aurangabad. What appears is that after the marriage, accused no.1 was serving in newspaper at Latur and, thereafter, he joined another newspaper at Jalna. He was residing in his house at Daregaon and from there he was coming to Jalna as it is nearby. Accused nos.2 and 3 although reside at Daregaon were residing separately. Thus, in fact, it was only accused no.1 and the victim who were living together. Still the evidence has been led in a vague manner to show as if all the accused were making demands,

beating and ill-treating the victim. The prosecution did not bring on record the evidence of any neighbour either from Latur or at Daregaon. At Latur, the victim and accused no.1 were residing in the house of one Govind More, but he has not been examined.

20. There is evidence that after the baby girl was delivered, accused no.1 along with accused nos.4 to 7 had visited the house of the complainant at Gavrai Bazar to see the baby. According to the complainant, at that time, he offered them clothes and “happily made a see off”. There is substance in the argument of the learned counsel for the accused that this itself shows that till that point of time there were no grievances. The cross-examination of the complainant shows that on 15.1.2010 the accused Sandeep had again gone to the house of the complainant to see the victim as well as his baby. The complainant admitted that after the birth of the baby, the baby was sick and, therefore, brought in the hospital named as Om Hospital, Jalna from the village of the complainant. The cross-examination of complainant further shows that when the victim was pregnant and residing along with the accused no.1 Sandeep at Latur and she was operated there for some abdominal problems, complainant admits that he did not visit her at that time. The learned counsel for the accused argued that this showed that there were no problems as the complainant was aware that

the accused would take care. The cross-examination of complainant further brought on record the fact that accused no.1 had tried to secure employment at Latur for the victim and she had also appeared for the Bank Recruitment Examination at that time; that the accused no.1 had arranged to get the victim admitted to D.Ed. course and that he got her admitted to MS-CIT course in an institute and had himself incurred the expenses. The victim had even passed the said examination and got a certificate. The complainant accepted that in 2009-10, victim took admission in Nath Krishi Tantra Vidyalaya, at village Galle Borgaon, Taluka- Khultabad, District-Aurangabad. The complainant pleaded ignorance, whether the accused had paid the fees in two instalments of Rs.6,500/- and Rs.4,960/- for the purpose. The complainant admitted that when the victim was admitted in the hospital at Latur for medical treatment before her pregnancy and even after she was carrying pregnancy, the expenses of medical treatment were borne by the accused no.1. If this is not enough evidence to show that accused no.1 was concerned for his wife and was not after money, there is further evidence. The complainant denied that accused no.1 had transferred a cash amount of Rs.1,75,000/- to the account of his son Yogesh to help him to purchase a car. It appears that PW7 purchased a car in 2009. In the cross-examination of PW7, however, had to admit that he had purchased swift maruti car and before the same was purchased, accused

no.1 had transferred an amount of Rs.1,75,000/- into his bank account. PW7 Yogesh tried to depose that he did not to accept that amount for the purchase of car and even volunteered in further cross-examination that he had returned the money. However, the material brought on record makes the evidence of PW1 and PW7 doubtful, that the accused no.1 was clamouring for money. Had it been so, he would not have been lending such huge amount to his brother-in-law Yogesh. The evidence shows that he was a concerned husband who wanted his wife to study further, that she should get a job and was taking care of her when she was ill.

21. The cross-examination of complainant shows that after the victim went missing on 7.2.2010, accused no.1 had on 9.2.2010 given proclamation in daily newspaper in 'Sakal' and daily 'Punaynagari' at Jalna. The accused no.1 continuously for three days advertised in the local channel of cable network at Jalna about the victim. Although the complainant denied that the accused no.1 submitted missing report to Police Station on 7.2.2010, there is evidence of PW5 Paraji that when he went to the hospital and came to know that the victim had gone down stairs and did not return, he along with accused no.1 and others had gone to Kadim Police Station Jalna and accused no.1 had lodged missing report. Although PW1 and PW7 have been supported by PW7 to PW10,

if the cross-examination of these witnesses is perused and is read along with the evidence of PW14 API Rangnath, there are various material contradictions and omissions. This can be seen from para nos.8, 10 and 11 of the cross-examination of PW14. The complainant had not stated in his complaint that he had taken Rs.90,000/- from one of his friend. PW 10 Ganesh, who had lent Rs.90,000/- to the complainant, gave his statement to the police only on 21.2.2010. PW8 Shivaji had not stated in his statement to the police that PW7 Yogesh had told him that they wanted to go to Aurangabad for giving cash amount. This PW8 Shivaji, a photographer having his shop, claimed in his evidence to have closed his shop just to accompany. If it does not show his interest, it would be unnatural. Looking to the various contradictions and omissions in the evidence of these witnesses, the trial court has rightly not relied on this evidence.

Trial Court view possible

22. We have carefully gone through the whole evidence and the reasons recorded by the trial court. The trial court has taken a view from the evidence that the offence is not established. On going through the material available, we also do not find that the prosecution has established the offence. The view taken by the trial court is possible view. In fact, looking to the material available, the view taken by the trial court is correct view of the evidence.

23. For the above reasons, there is no reason to grant leave to file appeal to the State or to allow the appeal and the appeal filed by the complainant also is not worth admitting or allowing.

24. For the above reasons, the application filed by the State as well as the appeal filed by the complainant, both are dismissed, with no order as to costs.

(A.I.S. CHEEMA, J.)

(S.S. SHINDE, J.)